



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: IVAC Corporation

File: B-231174

Date: July 20, 1988

DIGEST

1. A protester which did not submit a bid under a challenged invitation for bids (IFB) is an interested party to protest IFB requirements as unduly restrictive where the protester indicates that restrictions prevented it from bidding.
2. An agency determination to award a single contract for brand-name intravenous (IV) solutions and IV administration sets under a total package approach is reasonable where such approach was necessary to meet the agency's minimum need that the solutions and sets be compatible and will achieve economies of scale.

DECISION

IVAC Corporation protests award of a requirements contract for intravenous (IV) solutions and general purpose IV administration sets, under invitation for bids (IFB) No. M5-1-88, issued by the Veterans Administration (VA). IVAC contends that the single-award solicitation unduly restricts competition because it is limited to three brand-name manufacturers of both IV solutions and sets.

We deny the protest.

This IFB is intended to implement an agency- and government-wide standardization program consolidating the VA's requirements for IV solutions and compatible general purpose IV sets at its 172 VA Medical Centers (VAMC's) for a period of one base year and up to four option years. The IFB schedule lists more than 100 line items comprising the six most commonly used general purpose IV sets and the most commonly used IV solutions in containers of various capacities. The IFB specified part numbers for the six sets produced by the three most widely used manufacturers of solutions and sets, Kendall McGaw Laboratories, Inc., Baxter Healthcare Corporation, and Abbott Laboratories. The IFB specifically excluded "equal" items.

The VA currently purchases these pharmaceutical requirements from the Federal Supply Schedule (FSS), generally ordering IV solutions from one FSS contract and IV sets produced by the same manufacturer from a separate FSS contract. Upon award of the subject contract, these general purpose IV sets will be deleted from the FSS.

The general purpose IV sets are designed to dispense the contents of a solution container to a patient at a particular drip rate (e.g., 10, 15, 20 drops per ml.) which varies from brand to brand of IV set. Special or enhanced purpose IV sets are designed to accommodate additional instruments such as controllers, pumps, or specialized drug delivery systems. Since special purpose sets were not included in the IFB, VAMC's will continue to order them from the FSS to meet patient needs.

Bids were received from Kendall, Baxter, and Abbott, with Kendall the apparent low bidder. IVAC did not submit a bid, but filed a protest with this Office prior to bid opening. Award has been postponed pending our decision.

As a preliminary matter, the VA contends that IVAC is not an interested party entitled to protest because it does not have a sufficient direct economic interest to be an interested party under our Bid Protest Regulations. 4 C.F.R. § 21.0(a) (1988). The VA claims that IVAC does not produce any of the items on the IFB schedule; did not submit a bid; and seeks only to have the IV sets deleted from the IFB schedule.

IVAC responds that the single award, brand-name solicitation prevented it from bidding its IV sets. In this regard, although IVAC manufactures special purpose IV sets, designed for use with its instruments, it maintains that they can be used independently, as general purpose sets, to administer the solution of the brand-name manufacturers. Under the circumstances, we find that IVAC has the requisite interest in this procurement to maintain a protest of the IFB requirements. M. C. & D. Capital Corporation, B-225830, July 10, 1987, 87-2 CPD ¶ 32. We therefore decline to dismiss the protest on this basis.

IVAC protests as overly restrictive the single award to a manufacturer of both IV solutions and IV sets for the VAMC's requirements for as much as 5 years. We have recognized that such a "total package" procurement approach can restrict competition. The Caption Center, B-220659, Feb. 19, 1986, 86-1 CPD ¶ 174. However, the decision whether to procure on a total package basis, rather than by separate procurements or awards for divisible portions of a

requirement, is generally a matter within the discretion of the procurement agency. MASSTOR Systems Corp., B-211240, Dec. 27, 1983, 84-1 CPD ¶ 23. We will not disturb an agency's decision to procure using a total package approach, or the technical judgment forming the basis for that decision, absent a clear showing that the determination lacks a reasonable basis. Id.; Korean Maintenance Company, B-223780, Oct. 2, 1986, 86-2 CPD ¶ 379.

The director of the VA's Pharmacy Service and a panel of medical, surgical, nursing and other pharmacy experts determined that inclusion of the six general purpose IV sets in combination with the IV solutions were necessary to meet the VA's minimum needs. An important consideration in this determination was the requirement for 100 percent compatibility between solution containers and IV sets. The need for such compatibility is reflected in the VA's current purchasing practices from the FSS and the standard industry practice of ordering solutions and sets from the same manufacturer. Absent such compatibility, there is no assurance that these components will fit together properly and stay connected during use. Since manufacturers design their own IV sets and solution containers to be compatible with each other, mixing of the components of different manufacturers can cause IV set "fallout" (separation of the set from the container) or make it more difficult to remove the set spike from the container. Set fallout risks an air embolism or an increased risk of contamination of the patient. Any difficulty in removal of the container from the set can require replacement of the set between successive solution containers, which increases costs.

Moreover, the VA states that the total package approach will achieve economies of scale (here, volume discounts). See The Caption Center, B-220659, supra. Based upon the difference between the low bid and its estimate, the VA calculates that volume discounts under the single-award contract will save approximately \$55 million over the potential 5-year contract period. Further, as noted by Kendall, deletion of the IV sets from the IFB would result in a substantially higher bid for the solutions alone.

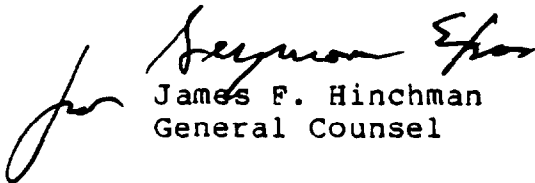
IVAC has alleged that its special purpose IV sets can be used with the solution containers manufactured by Kendall, Baxter, and Abbott. However, it has neither alleged nor shown that its IV sets meet the VA's minimum requirement for 100 percent compatibility between sets and containers or that the compatibility requirement is unreasonable. It also has not shown that it would be appropriate to use its special purpose sets as general purpose sets or that separate purchase of its IV sets from the FSS or under the current IFB would result in any cost savings through

economies of scale. Consequently, we find the VA's total package approach is reasonable.

IVAC also has speculated on how the contract will be administered. Based upon conversations with unidentified VA personnel at two VAMC's, IVAC claims that the contract will lead VAMC's erroneously to believe that all IV sets, even those not covered by the contract, will have to be ordered from the awardee resulting in a competitive bias against IVAC. The VA states that any misunderstandings of the contract are isolated and unwarranted given the plain scope of the contract, but that in any event it will clarify the purpose of the contract to the VAMC's. We, too, believe the contract is clear on this point.

IVAC also claims that this approach could negate the purchasing policies of some VAMC's. IVAC claims that some VAMC's may have the policy of acquiring all IV sets from the same manufacturer to ensure uniform drip rates in all sets. However, the determination of the government's needs and the best method of accommodating them are primarily the responsibilities of the procuring activity. Kisco Co., Inc., B-216953, Mar. 22, 1985, 85-1 CPD ¶ 334. IVAC has not shown that the VA abused its discretion in the exercise of these responsibilities. Further, to the extent that IVAC's concerns relate to the VA's medical policies, we will not consider them under our bid protest functions. Travenol Laboratories, Inc., B-215739, B-216961, Jan. 29, 1985, 85-1 CPD ¶ 114.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel